



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/341,328 07/06/99 MIKAMI

S KINOSHITACA

HM12/1010

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EXAMINER

PULLIAM, A

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

10/10/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/341,328

Applicant(s)

MIKAMI ET AL.

Examiner

Amy E Pulliam

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☒ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of the Request for Extension of Time and the Amendment A, both received August 4, 2000.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

New Matter

The amendment filed August 4, 2000 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The claims have been amended to state "firmly adhered," however, the word *firmly* is not disclosed in the originally filed specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Drawings

The objection to the drawings is withdrawn, as the formal drawing have been approved by the draftsman.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,496,544 to Mellul *et al.* (hereinafter Mellul). Mellul discloses a cosmetic composition for skin consisting of a powder and a silicone resin mixture (abstract). Mellul further teaches that face powders and the like usually consist of coloured or non-coloured powders and a fatty binder, which is then applied to the skin by means of an applicator such as a sponge, powder puff, or brush (c 1, l 13-23). Mellul's discloses a cosmetic composition with a powder comprising a solid particulate phase mixed with a fatty binder containing a silicone mixture (c 2, l 48-58). It is the position of the examiner that Mellul's invention reads on applicant's claims. Applicant is claiming an applicator with a powder adhered to the side which will touch the skin. Mellul teaches that powder puffs, applicators, and sponges are well known in the cosmetic art to apply facial powder and the like to the skin. Further, applicant claims that the powder adheres to the applicator through a treatment with a resin mixture. Mellul teaches a powder mixed with a silicone resin mixture (weight percents discussed in c 2, l 61), and teaches that it is applied to the skin in the usual methods (c 7, l 51-52). Mellul does not teach the specific particle size of the powder. However, it is the position of the examiner that the specific particle size is a limitation that would be

routinely determined by one of ordinary skill in the art, through minimal experimentation, as being suitable, absent the presentation of some unusual and/ or unexpected results. The results must be those that accrue from the specific limitations. Therefore, it is the position of the examiner that one of ordinary skill in the art would have been motivated to use a well known applicator (as discussed by Mellul) to apply a cosmetic composition comprising a powder and a silicone resin mixture, as taught by Mellul. One of ordinary skill in the art would expect an improved cosmetic composition. Therefore, this invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy E Pulliam whose telephone number is (703) 308-4710. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7922 for regular communications and (703) 308-7922 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1800

